

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PATTIVA McKEAN,)
)
 Plaintiff,)
)
 v.) C. A. No. _____
)
 NORFOLK SOUTHERN RAILWAY)
 COMPANY, a Virginia corporation,)
)
 Defendant.)

NOTICE OF REMOVAL

THE STATE COURT ACTION

1. On July 14, 2006, Pattiva McKean, ("Plaintiff"), filed this action in the Superior Court of the State of Delaware in and for Kent County, against defendant Norfolk Southern Railway Company ("Norfolk Southern"). Plaintiff alleges that this action remains pending in the Superior Court of the State of Delaware in and for Kent County. Plaintiff is a citizen of the State of Delaware and Norfolk Southern is a citizen of the Commonwealth of Virginia with its principal place of business located at Three Commercial Place, Norfolk, Virginia 23510-2191.

2. Copies of the Complaint and Summons (Exhibit A hereto) were served on The Corporation Trust Company, Norfolk Southern's registered agent for service of process in Delaware, on August 1, 2006.

FEDERAL COURT JURISDICTION AND REMOVABILITY

3. Norfolk Southern may remove this action to this Court pursuant to 28 U.S.C. §§1441, 1446 because:

a. This action is a civil action over which this Court has original jurisdiction under 28 U.S.C. § 1332. The amount in controversy exceeds \$75,000.00 exclusive of interest and costs (*see* Affidavit of Nicholas H. Rodriguez (attached to Complaint)), and the action is between citizens of the different states (plaintiff a citizen of Delaware and defendant a citizen of Virginia);

b. The United States District Court for District of Delaware is the district court embracing the place, Kent County, where the state court action was brought and is pending. 28 U.S.C. § 1441(a);

c. This Notice of Removal is being filed within 30 days after Norfolk Southern was served with the Complaint initiating this action.

4. Attached to this notice are copies of all process, pleadings, and orders filed or served in this action in the Superior Court of the State of Delaware in and for Kent County, and known to Norfolk Southern.

WHEREFORE, pursuant to 28 U.S.C. § 1446, defendant Norfolk Southern Railway Company gives notice that this action is removed to this Court.

POTTER ANDERSON & CORROON LLP

By: 
Daniel F. Wolcott, Jr. (#284)
David E. Moore (#3983)
Hercules Plaza, 6th Floor
1313 N. Market Street, P.O. Box 951
Wilmington, Delaware 19899
(302) 984-6000
dwolcott@potteranderson.com
dmoore@potteranderson.com

Dated: August 25, 2006
746876

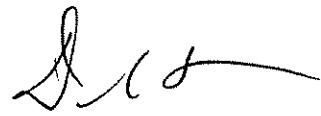
*Counsel for Defendant
Norfolk Southern Railway Company*

CERTIFICATE OF SERVICE

I, David E. Moore, hereby certify that on August 25, 2006, a true and correct copy of the within document was caused to be served on the attorney of record at the following addresses as indicated:

VIA HAND DELIVERY

Nicholas H. Rodriguez
Schmittinger and Rodriguez, P.A.
414 South State Street
P.O. Box 497
Dover, DE 19903-0497



David E. Moore

747639

EXHIBIT A

SUPERIOR COURT CIVIL CASE INFORMATION STATEMENT (CIS)

COUNTY: N SCIVIL ACTION NUMBER: D6C-07-034 JTVCIVIL CASE CODE: CPIACIVIL CASE TYPE: Personal Injury Auto

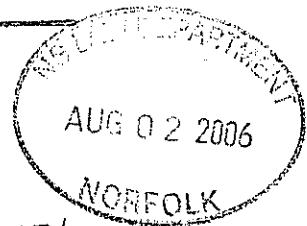
(SEE REVERSE SIDE FOR CODE AND TYPE)

CAPTION:		NAME AND STATUS OF PARTY FILING DOCUMENT:	
PATTIVA MCKEAN,		Pattiva McLean, Plaintiff	
Plaintiff,			
v.			
NORFOLK SOUTHERN RAILWAY		DOCUMENT TYPE: (E.G., COMPLAINT; ANSWER WITH COUNTERCLAIM)	
COMPANY, a Virginia corporation,		Complaint	
Defendant.		Non-Arbiration <input checked="" type="checkbox"/> (Certificate of Value may be required)	
		Arbitration <input type="checkbox"/> Mediation <input type="checkbox"/> Neutral Assessment <input type="checkbox"/> DEFENDANT (CIRCLE ONE) ACCEPT REJECT	
		JURY DEMAND YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
		TRACK ASSIGNMENT REQUESTED (CIRCLE ONE) <input checked="" type="checkbox"/> EXPEDITED <input type="checkbox"/> STANDARD <input type="checkbox"/> COMPLEX	
ATTORNEY NAME(S): Nicholas H. Rodriguez, Esquire		IDENTIFY ANY RELATED CASES NOW PENDING IN THE SUPERIOR COURT BY CAPTION AND CIVIL ACTION NUMBER INCLUDING JUDGE'S INITIALS	
ATTORNEY ID (S): 356			
FIRM NAME: SCHMITTINGER & RODRIGUEZ, P.A.			
ADDRESS: 414 SOUTH STATE STREET P.O. BOX 497 DOVER, DE 19903-0497		EXPLAIN THE RELATIONSHIP(S):	
TELEPHONE NUMBER: 302-674-0140		OTHER UNUSUAL ISSUES THAT AFFECT CASE MANAGEMENT:	
FAX NUMBER: 302-674-1830			
E-MAIL ADDRESS: nrodriguez@schmittrod.com		(IF ADDITIONAL SPACE IS NEEDED, PLEASE ATTACH PAGES)	

THE PROTHONOTARY WILL NOT PROCESS THE COMPLAINT, ANSWER OR FIRST RESPONSIVE PLEADING IN THIS MATTER FOR SERVICES UNTIL THE CASE INFORMATION STATEMENT (CIS) IS FILED. THE FAILURE TO FILE THE CIS AND TO HAVE THE PLEADING PROCESSED FOR SERVICE MAY RESULT IN THE DISMISSAL OF THE COMPLAINT OR MAY RESULT IN THE ANSWER OR FIRST RESPONSIVE PLEADING BEING STRICKEN.

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

AUG 02 2006



PATTIVA McKEAN, * C.A. No. CIVC-07-034 JTV 3
* Plaintiff, * NON-ARBITRATION CASE
* v. * *
* NORFOLK SOUTHERN RAILWAY * COMPLAINT
* COMPANY, a Virginia *
* corporation, * TRIAL BY JURY DEMANDED
* Defendant. *

1. Plaintiff is Pattiva McKean who resides at 21860 Shell Station Road, Frankford, Delaware 19945.

2. Defendant is Norfolk Southern Railway Company, a Virginia corporation, its resident agent being The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

3. On Monday, November 29, 2004, at 6:25 p.m., Plaintiff was operating her 2001 Honda Accord sedan westbound on County Route 86, Avenue of Honor, .2 miles east of County Route 326 (Bethesda Road), four miles north of Millsboro, Sussex County, and State of Delaware approaching a railroad grade crossing at the time occupied by a train owned and operated by Defendant with 135 cars proceeding northbound through the grade crossing, at which point Plaintiff's vehicle collided with Car 31 involving the front of her vehicle and the side of Car 31, which collision caused the damages and injuries herein alleged.

4. The collision was caused by the negligence of the Defendant, its agents or employees, as follows:

a. It failed to inspect, check, and maintain the flasher signals for westbound traffic on Route 86, which flasher signals were not activated by the train and were not operating at the time of the collision, thus giving the Plaintiff no warning that the train was passing over the roadway;

b. It failed to note the optical light on the side of the signal which was not activated and which would automatically notify the crew that the flashers for westbound traffic were not operating;

c. It failed to stop the train prior to crossing County Route 86, notify the dispatcher that the flashing signals were not operating, and to place fusees on the crossing before allowing the train to proceed to cross County Route 86;

d. It failed to provide adequate lighting at the crossing over County Route 86 which at the time of the collision was in total darkness;

e. It failed to comply with the Northeast Operating Rules Advisory Committee (NORAC) rules by stopping the train before crossing County Route 86; by failing to notify the dispatcher that the lights and flashers for westbound traffic were not operating; by failing to put out fusees to warn westbound traffic on County Route 86 of the non-function of the flashing signals; and by failing to take other safety precautions to warn westbound traffic of the presence of the train;

f. It failed to comply with the Department of Transportation regulations for maintaining, operating, and protecting the grade crossing from accidents and the promotion of

safety of the public in violation of 2 Del. C. §1804(b) and the regulations of the Department of Transportation;

g. It failed to inspect, check, maintain, and repair the flashing signal lights at the grade crossing despite knowledge and/or knowledge that could have been acquired through reasonable inspections that the grade crossing flashing lights for westbound traffic on County Route 86 had not been functioning in the past and were not functioning at the time of the collision;

h. It failed to recognize this crossing as an extra hazardous crossing due to the volume of traffic using the same with the crossing having no artificial illumination and the approach of northbound trains being obscured by trees adjacent to the tracks.

5. As a result of the negligence of the Defendant, its agents or employees, the Plaintiff sustained serious temporary and permanent injuries; she incurred past pain and suffering and will incur future pain and suffering; she has incurred past medical expenses in excess of her personal injury protection limits and will incur future medical expenses; she has incurred past lost wages in excess of her personal injury protection insurance limits and has sustained an impairment of her earning capacity; she has sustained permanent partial impairment and permanent disfigurement of her body; and she has sustained serious emotional injuries.

WHEREFORE, Plaintiff demands judgment against Defendant for damages generally, interest, and costs.

SCHMITTINGER & RODRIGUEZ, P.A.

BY: 

NICHOLAS H. RODRIGUEZ, ESQUIRE
Bar I.D. #356
414 S. State Street
P.O. Box 497
Dover, DE 19903
302-674-0140
Attorney for Plaintiff

DATED: 7/14/06

NHR:pmw

CERTIFICATION OF VALUE

I, Nicholas H. Rodriguez, Esquire, attorney for Plaintiff, hereby certify in good faith at this time, in my opinion, that the sum of damages of all Plaintiffs is in excess of \$100,000, exclusive of costs and interest.

SCHMITTINGER AND RODRIGUEZ, P.A.
BY: 
NICHOLAS H. RODRIGUEZ, ESQUIRE
414 South State Street
P.O. Box 497
Dover, Delaware 19903-0497
(302) 674-0140
Attorney for Plaintiff

DATED: 7/14/06

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

PATTIVA McKEAN,

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation,

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

Daniel F. Wolcott, Jr. (#284)
David E. Moore (#3983)
Potter Anderson & Corroon LLP (302) 984-6264
1313 N. Market Street, 6th Floor, Wilmington, DE 19801

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	<input checked="" type="checkbox"/> PTF	<input type="checkbox"/> DEF	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> PTF	<input checked="" type="checkbox"/> DEF
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input checked="" type="checkbox"/> 362 Personal Injury—Med. Malpractice	<input type="checkbox"/> 420 Other Food & Drug	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury—Product Liability	<input type="checkbox"/> 425 Drug Related Seizure of Property 21 USC	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 430 Liquor Laws	<input type="checkbox"/> 450 Commerce/JCC Rates/etc
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 440 R.R. & Truck	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 450 Airline Regs.	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 460 Occupational Safety/Health	<input type="checkbox"/> 480 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> 490 Other	<input type="checkbox"/> 490 Securities/Commodities/ Exchange
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury	PROPERTY RIGHTS	<input type="checkbox"/> 475 Customer Challenge 12 USC 3410
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 420 Copyrights	<input type="checkbox"/> 491 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 430 Patent	<input type="checkbox"/> 492 Economic Stabilization Act
REAL PROPERTY				
<input type="checkbox"/> 210 Land Condemnation	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 440 Other	<input type="checkbox"/> 493 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 464 SSID Title XVI	<input type="checkbox"/> 494 Energy Allocation Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 515 Habeas Corpus:	<input type="checkbox"/> 465 RSI (405(g))	<input type="checkbox"/> 495 Freedom of Information Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 470 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 500 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 471 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 505 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 490 Other Statutory Actions
		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		
LABOR				
		SOCIAL SECURITY		
		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (1395ff)	
		<input type="checkbox"/> 720 Labor/Mgmt Relations	<input type="checkbox"/> 862 Black Lung (923)	
		<input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	
		<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 864 SSID Title XVI	
		<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RSI (405(g))	
		<input type="checkbox"/> 791 Empl. Ret. Inc Security Act		
FEDERAL TAX SUITS				
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
			<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

<input type="checkbox"/> 1 Original Proceeding	<input checked="" type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 (specify)	Transferred from another district	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause
Do not cite jurisdictional statutes unless diversity.)

28 U.S.C. Sections 1441, 1446 (removal statute - diversity of the parties and amount sought in complaint is greater than \$75,000.00)

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) (See instructions:
IF ANY JUDGE DOCKET NUMBER

DATE 8/28/06 Signature _____
FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44**Authority For Civil Cover Sheet**

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1335 and 1338. Suits by agencies and officers of the United States, are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.C.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.